आयकर अपीलीय अधिकरण, **'सी' न्यायपीठ, चेन्नई।** **IN THE INCOME TAX APPELLATE TRIBUNAL** **'C' BENCH: CHENNAI**		
श्री **मंजूनाथा. जी,** लेखा सदस्य एवं **श्री मनोमोहनदास, न्यायिक सदस्य के समक्ष** **BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER** **AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER**		
आयकर अपील सं./**ITA Nos.1164 & 1165/Chny/2023** निर्धारण वर्ष**/Assessment Years: 2015-16 & 2016-17**		
M/s.Enrica Enterprises Pvt. Ltd., No.85, Matruvazhi Salai, (Bypass Road), Poonamallee, Chennai-600 056. [**PAN: AAACE 9199 F**]	**v.**	The Dy. Commissioner of – Income Tax, Central Circle-3(4), Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh – Kumar, CIT
सुनवाई की तारीख/Date of Hearing	:	13.02.2024
घोषणा की तारीख /Date of Pronouncement	:	06.03.2024

आदेश **/ O R D E R**

PER MANJUNATHA. G, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-20, Chennai, dated 17.08.2023 and pertains to assessment years 2015-16 & 2016-17. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2015-16, are re-produced as under:

1. The order of the learned Commissioner Of Income (Appeals)-20, is wrong, illegal and is opposed to law. The learned Commissioner (Appeals) erred in law and on facts in confirming the action of learned assessing officer in levying penalty under section 271(l)(c).

2. The learned Commissioner Of Income (Appeals)-20 ought to have seen that the appellant has neither furnished inaccurate particulars of income nor has concealed the particulars of income warranting levy of penalty under section 271(1)(C).

3. The learned CIT(A)-20 ought to have seen that the penalty proceedings is deemed to have been initiated only with the issue of notice under section 274 r.w.s 271(1)(C) and that the said notice should specifically state the reasons for levy of penalty. Failure on the part of the AO to specifically state the reasons under which limb the penalty is levied would tantamount to failure to record satisfaction as well as non-application of mind thereby making the said levy illegal and opposed to law. In the instant case the penalty notice suffers from aforesaid infirmity.

4. The learned CIT(A) ought to have seen that the discretion to impose penalty must be exercised judicially. The learned CIT(A) failed to see that addition made in the assessment order is on ad hoc basis, based on estimated disallowances of portion of marketing expense and based on surrender of income not backed by any incriminating material. It is not a case of which either the appellant or the investigation team had any evidence as to the quantum of inflated expenditure warranting levy of penalty under section 271(1)(C).

5. The learned CIT(A) failed to see that in the instant case addition is made by the assessing officer merely based on income surrendered by the appellant and not based on any incriminating material warranting levy of penalty. Neither the appellant nor the investigation team had any evidence as to the quantum of inflated expenditure year wise.

6. The learned CIT(A) failed to see that the AO while levying penalty under section 271(1)(C) placed undue reliance on section 271AAB of the Act.

7. The learned CIT(A) ought to have seen that the impugned penalty has been levied based on non-application of mind and legalities therein. The penalty in the impugned assessment year has been levied for underreporting of income while the concept of underreporting of income is applicable only from AY: 2017-18.

8. The learned CIT(A) failed to see that in the instant case the quantum assessment is completed based on ad hoc disallowances estimating disallowances of portion of marketing expense and based on surrender of income not backed by any incriminating material which would neither mean that the assessee has concealed any income or furnished inaccurate particulars warranting levy of penalty.

9. The learned Commissioner (Appeals) erred in law and on facts in confirming the action of learned assessing officer in levying penalty under section 271(l)(c). The learned 1st appellate authority failed to see that the penalty proceedings are independent of assessment proceedings and therefore penalty is not leviable merely on the ground that certain additions have been made in the assessment proceedings.

10. The learned Commissioner ought to have seen that penalty cannot be levied merely because an amount taxed as income as held by HonTDle Supreme Court in the case of M/s Hindustan Steel Ltd. vs State of Orissa (1972) 83 ITR 26(SC) and decision of Hon'ble High Court of Delhi in Escorts Finance Ltd. (2009) 226 CTR (Del) 105.

For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the appellants appeal and thus render justice.

3. The brief facts of the case are that the assessee, M/s. Enrica Enterprises Pvt. Ltd., is engaged in the business of manufacture and sale of Indian Made Foreign Liquor (IMFL) and it is one of the prime suppliers to M/s.Tamilnadu State Marketing Corporation Ltd (TASMAC). A search and seizure operation u/s.132 of the Income Tax Act, 1961 (in short "the Act"), was conducted at the premise of the assessee on 06.12.2018. During the course of search, a sum of Rs.55,27,70,000/- of unaccounted cash was found and seized from the residential premise of Shri M.Kothandarami Reddy as well as six individuals who identified themselves as associates of the assessee and claimed that they have held the cash for and on behalf of the assessee. The amount of cash seized during the course of search and seizure on 06.12.20128 in the residential premise of Shri. M.Kothandarmi Reddy and others was tabulated in Page No.2 of the assessment order. In the course of search, a sworn statement u/s.132(4) of the Act, was recorded from Shri S.D.Rami Reddy, working Director of the assessee company and in response to Q.Nos.17 & 18, he has explained the *modus operandi* of generation of cash found and seized

during the course of search and also admitted a sum of Rs.113.99 Crs. as additional income for the period from 01.04.2014 to 06.12.2018 which includes cash seizure of Rs.55.27 Crs. The Director of the assessee company has also explained the ***modus operandi*** of generation of unaccounted cash by way of inflated expenditure booked under the head marketing expenses being 'gift articles' and admitted that on an average 1/3rd of actual expenditure accounted in the books of accounts, has been received back in cash from the suppliers. The relevant question and answers in the statement recorded u/s.132(4) of the Act, from Shri S.D.Rami Reddy, was reproduced as under:

> *"**Q.17.** While answering to Q.6, in your sworn statement recorded under section 132(4) dated 9.12.2018, while asking the modus operandi of generating unaccounted cash, you have stated that you will raise bogus bills for which you pay them through banking channels and receive cash from them. Please go through your statement and clarify about generation of unaccounted cash.*
>
> ***Ans.** Sir, we have not raised any bogus bills from our suppliers of gift articles to generate unaccounted cash. However, we received back one third of the invoice value on an average in the form of cash from our gift article suppliers. Since this amounts to inflation of the expenditure in our books of account, we undertake to withdraw of claim towards expenditure in the respective years.*
>
> ***Q:18.** Please furnish the quantity of cash generated invoice-wise and party -wise with details of suppliers?*
>
> ***Ans.** Sir I don't have the invoice-wise and party -wise details of cash generated. However, I am here by submitting year-wise details of cash generated on this account as under –*

S.No.	***Financial Year***	***Amount in Crores***
1	*2014-15*	*16.39*
2	*2015-16*	*23.62*
3	*2016-17*	*15.79*
4	*2017-18*	*25.73*
5	*2013-19*	*32.46*
		113.99

However, no corroborative evidence to the sworn statement was unearthed during search.

4. Consequent to search proceedings, the cases were taken up for assessment proceedings. In response to notice issued u/s 153A of the Act, by the AO for both the assessment years, the assessee has filed its return of income on 23.11.2020 admitting a total income of Rs.7,92,44,724/- and Rs.14,52,34,049/- which includes additional income offered during the course of search towards inflated expenditure. In the return of income filed for AYs 2015-16 & 2016-17, the assessee company has offered additional income of Rs.16.39 Crs. & Rs.23.62 Crs. respectively towards additional income offered during the course of search on account of inflated expenditure under the head marketing expenses being purchase of 'gift articles'. During the course of assessment proceedings, on enquiry with the suppliers of gift articles, replies were received from the suppliers of gift articles along with account copy as reflected in the books of the assessee, where, all of them stated to have supplied gift articles to the assessee, but some of them also stated that the assessee took back some cash at times. The AO completed the assessment u/s.143(3) r.w.s.153A of the Act on 26.07.2021, accepting the additional income voluntarily offered by the assessee towards inflated expenditure under the head 'gift articles'. While completing the assessment, the AO observed that after considering relevant submissions of the assessee, the income offered by the assessee, including estimated disallowance of portion of marketing expenses, is

found to be in order and accepted. The relevant submissions of the assessee and findings of the AO are reproduced as under:

> *In continuation to the above, during assessment proceedings, assessee claimed that no corroborative evidence to the sworn statement w.r.t. found/seized materials was unearthed so as to suggest the culpability of tax evasion.*
>
> *After going through the circumstances in entirety. The income offered by the assessee, including the estimated disallowance of portion of marketing expenses, is found to be in order and accepted.*

5. Along with the assessment order dated 26.07.2021 for both assessment years, the AO initiated penalty proceedings u/s.271(1)(c) of the Act and notice u/s.274 r.w.s.271(1)(C) of the Act, dated 26.07.2021 was issued and served on the assessee. In the said show cause notice, in bold letters, the AO stated that 'it appears to me that you have concealed the particulars of income or furnished inaccurate particulars of such income and thus, called upon the assessee to show cause 'as to why' penalty u/s.271(1)(C) of the Act, cannot be imposed. In response to show cause notice, the assessee vide letter dated 07.08.2021 raised its objection on notice issued u/s.274 r.w.s.271(1)(C) of the Act and also filed its explanation why penalty cannot be imposed u/s.271(1)(C) of the Act in the given facts and circumstances of the case. The assessee further submitted that it has neither concealed the particulars of income nor furnished inaccurate particulars of income, which is evident from the assessment order passed by the AO, where the AO has accepted explanations furnished by the assessee with regard to additional income

offered during the course of search towards inflated expenditure under the head 'marketing expenses'.

6. The AO after considering relevant submissions of the assessee and also taken note of various facts observed that the assessee has deliberately and knowingly appropriating concealed amount of cash from the business and stored in the residential premise of employees and relatives. From the above, it is clearly evident that unaccounted income generated by the assessee by inflated expenditure under the head 'marketing expenses' was unearthed only because of search action conducted on 06.12.2018. Unless action has been taken by conducting search, the assessee would have continued the practice of evasive methodology and caused huge loss to the Revenue. Therefore, the Assessing Officer opined that admission of additional income and payment of taxes does not absorb the assessee from penalty proceedings. Therefore, rejected arguments of the assessee and levied penalty u/s.271(1)(c) of the Act, amounting to Rs.5,67,22,512/- which is equivalent to 100% tax sought to be adopted. The relevant findings of the AO are as under:

V. The submission of assessee and the material available on record is perused carefully and the following observations are made.

a.) Assessee company is engaged in business of manufacture and sale of IMFL products and is one of the prime suppliers to M/s. TASMAC.

b.) The modus operandi of the business is, assessee indulges in suppression of real income by means of inflation of expenses, particularly under the head purchase of gift articles and other business promotion expenses. Further, the payments were made to suppliers by transferring by way of cheques/RTGS. Later, the vendor/suppliers withdrew cash and handed over to the assessee – M/s. Enrica Enterprises Pvt Ltd. By this modus operandi the assessee has generated unaccounted cash over a period of years.

Further, Mr.Rami Reddy, director of M/s. EEPL decides the quantum of amount to be generated in cash from various suppliers. The close aide of the group were actively involved in assisting for safe keeping the cash. The huge sum of cash seizedduring the search action were such safely kept cash meant for meeting out certain expenditures. In his self-incriminating statement u/s 132(4) of the IT Act 1961, Mr.Rami Reddy, has claimed to have resorted into the activity of withdrawing, by wayof cash, a portion of his RTGS payments towards supply of gift articles booked under the head selling expenses as "marketing expenses".

c.) During the search proceedings an amount of Rs.54,59,20,000/- was seized in the residence and office of different parties including the employees of M/s.EEPL and relatives of Mr.Rami Reddy, who aided him in safe keeping of such huge cash money. The assessee has consciously stashed the cash in different places in order to utilize them whenever required. This would have never reached the light of law unless, a search action was conducted u/s 132 of the IT Act 1961. As all the

evidences gathered were against the assessee, the same has been admitted and offered in the return filed u/s 153A by the assessee in the respective assessment years as tabulated below.

AY	U/s 139(1)	Additional Income as compared to original return	U/s 153A	Sum Offered during Search (in crores)
2015-16	7,92,44,724	16,39,00,000	24,31,44,724	16.39
2016-17	14,52,34,049	23,62,00,000	38,14,34,049	23.62
2017-18	(-)13,23,64,515	15,79,00,000	2,55,35,485	15.79
2018-19	8,82,46,473	25,73,00,000	34,55,46,473	25.73
2019-20	(Original)103,10,81,312 (Revised) 125,92,51,312	32,46,00,000	103,10,81,312	32.46

It is evident from the above discussion that, the huge amount appropriated for making non-business expenditures were unearthed only because of the Search Action conducted on 06.12.2018. Hence, there is no merit in the claim of assessee that it has disclosed the expenses voluntarily. Unless, the evasion had been detected, assessee would have continued practicing this evasive methodology forever and caused huge loss to revenue.

d.) Assessee has stated in its reply that " *the assessee had not concealed any information since all the required details of the assessment were furnished to the assessing officer by the assessee*". The statement of assessee is conveniently phrased to hide the unlawful practices it had been indulging in for a very long period which would have remained discreet unless a search action was conducted. The concealment was detected and has been brought to tax.

e.) Further, assessee has stated in its reply dated 29.07.2021 that, *"no reason has been specified"*. It is to be clarified that the penalty has been initiated u/s

271(1)(C) of the Income Tax Act, 1961 and hence it is very clear that the penalty proceedings are initiated for "concealment of income". For, further clarification the relevant section is reproduced here.

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

Explanation 5A.— Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year, or

(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

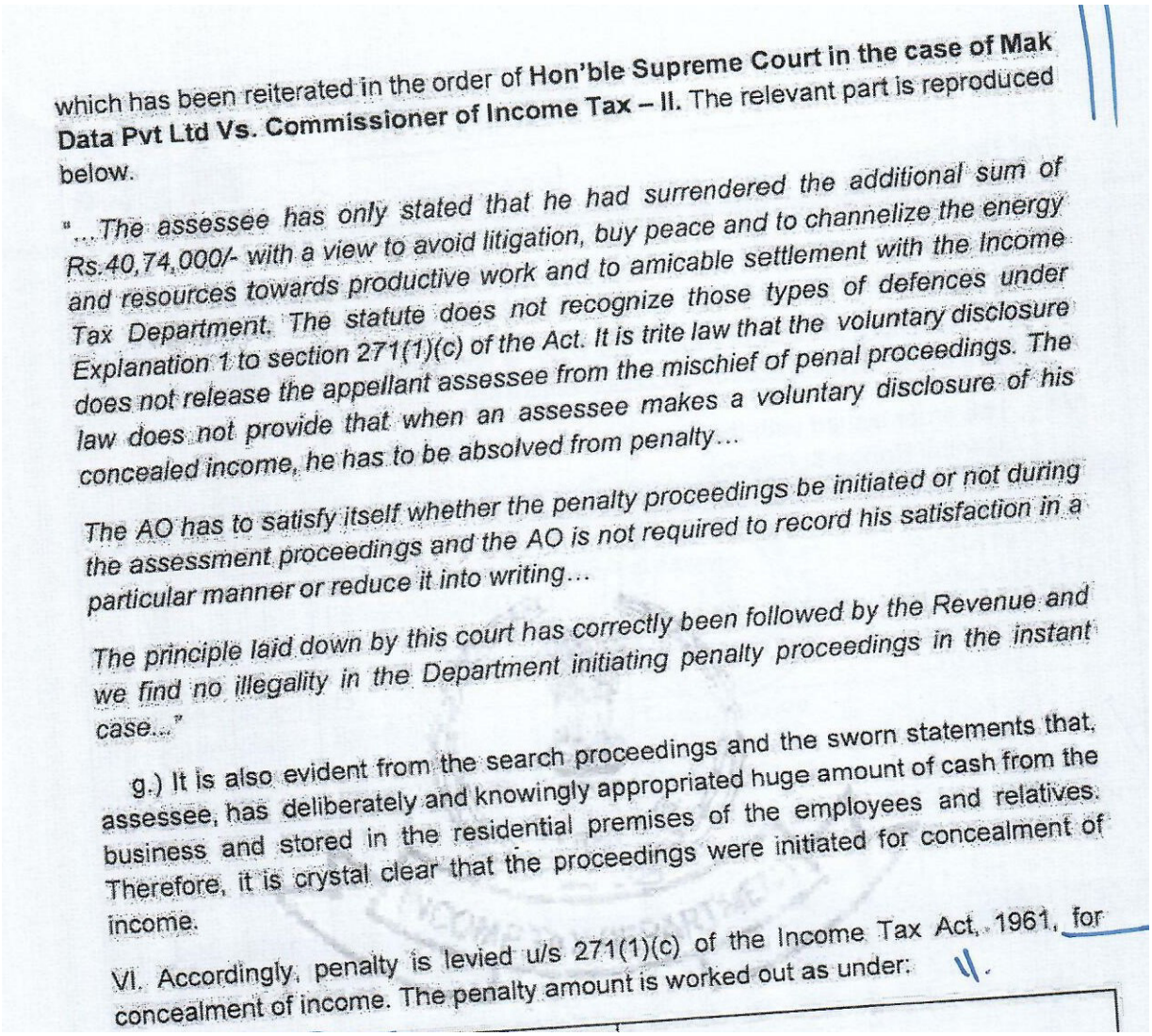
which has ended before the date of search and,—

(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or

(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

f.) And the assessee's claim that it has extended complete cooperation during the assessment proceedings has no virtue, as the concealment cannot be nullified by mere cooperation post search action. Further, the fact that assessee has not preferred appeal also loses merit in this aspect. Because, it is only confirming the truth that, assessee has indulged in tax evasion and hence finds no merit its own case. Further, the statute does not recognize such defenses under section 271AAB,



which has been reiterated in the order of **Hon'ble Supreme Court in the case of Mak Data Pvt Ltd Vs. Commissioner of Income Tax – II.** The relevant part is reproduced below.

"...The assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to amicable settlement with the Income Tax Department. The statute does not recognize those types of defences under Explanation 1 to section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the appellant assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty...

The AO has to satisfy itself whether the penalty proceedings be initiated or not during the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing...

The principle laid down by this court has correctly been followed by the Revenue and we find no illegality in the Department initiating penalty proceedings in the instant case..."

g.) It is also evident from the search proceedings and the sworn statements that, assessee, has deliberately and knowingly appropriated huge amount of cash from the business and stored in the residential premises of the employees and relatives. Therefore, it is crystal clear that the proceedings were initiated for concealment of income.

VI. Accordingly, penalty is levied u/s 271(1)(c) of the Income Tax Act, 1961, for concealment of income. The penalty amount is worked out as under:

7. Being aggrieved by the penalty order, the assessee preferred an appeal before the Ld.CIT (A). Before the Ld.CIT (A), the assessee challenged the penalty order passed by the AO u/s.271(1)(c) of the Act, in light of show cause notice issued u/s.274 r.w.s.271(1)(C) of the Act, dated 26/11/2021 and argued that, in absence of proper satisfaction recorded by the AO and also show cause 'as to why' penalty proceedings are initiated, the AO cannot levy penalty u/s.271(1)(c) of the Act. The assessee has also challenged penalty levied on estimated addition towards additional income offered by the assessee for inflated

expenditure under the head 'marketing expenses' on the ground that allocation of additional income for both assessment years was only on *ad hoc* basis and there was no evidence with the AO as regards 'concealment of particulars of income or furnishing of inaccurate particulars of income'.

8. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. v. CIT-II [2013] 358 ITR 593 (SC) held that going by the facts and circumstances of the present case, the assessee case gets covered by Explanation-5(A), where any income based on any entry in any books of accounts or other documents or transaction and assessee claims that such entry in the books of accounts or other documents or transactions represents his income for any previous year which has ended before the date of search and return of income for such previous year, has been furnished before the said date, but such income has not been declared, then, notwithstanding that such income declared by him in any return of income furnished on or after the date of search, he shall for the purpose of imposition of penalty u/s.271(1)(c) of the Act, be deemed to have concealed the particulars of income or furnished inaccurate particulars of income. The Ld.CIT(A) had discussed the issue at length in light of grounds of appeal filed by the assessee and negated ground taken by the assessee on the issue of show cause notice issued by the AO u/s.274 r.w.s.271(1)(c) of the Act. The Ld.CIT(A) had also discussed the issue in

light of additional income offered by the assessee during the course of search coupled with enquiries conducted with suppliers of gift articles during the course of assessment proceedings, and observed that the suppliers have confirmed the fact of cash received back by the assessee and from the above, it is undoubtedly clear that the assessee is in the habit of inflating expenditure and receiving 1/3rd of cash back from the suppliers. Further, this fact has been strengthened from the seizure of cash during the course of search, where the Department has seized huge amount of unaccounted cash from the residential premise of the Director and their associates and also confirmed generation of unaccounted cash by employing the *modus operandi* of booking expenditure and receiving cash from the suppliers. Therefore, rejected arguments of the assessee and penalty levied by the AO t u/s.271(1)(c) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

9. The Ld. Counsel for the assessee, Shri D. Anand, Advocate, referring to show cause notice issued u/s.274 r.w.s.271(1)(c) of the Act dated 26.07.2021 submitted that, the AO has issued a printed form of show cause notice without specifying under which limb the assessee is charged to levy penalty u/s.271(1)(c) of the Act, which shows non-application of mind by the AO. The Ld. Counsel for the assessee further submitted that the AO should arrive at a clear satisfaction and such satisfaction should be discernable from the assessment order itself. Further, show-cause notice issued by the AO should clearly spelt out the

charge, on which, he proposed to initiate penalty proceedings. Issuing printed form of notice without specifying the charge, i.e. whether penalty proceedings has been initiated for 'concealment of particulars of income or furnishing of inaccurate particulars of income' vitiates the entire proceedings, including consequent order passed by the AO imposing penalty u/s.271(1)(C) of the Act. The Ld.Counsel for the assessee referring to the plethora of judicial precedents, including the decision of the Hon'ble Supreme Court in the case of CIT v. SSA's Emerald Meadows reported in [2016] 73 taxmann.com 241 submitted that non-specifying the specific charge in the show-cause notice would vitiates the penalty proceedings. In the present case, the assessment order is silent about satisfaction arrived at by the AO about 'concealment of particulars of income or furnishing of inaccurate particulars of income' which is evident from the assessment order dated 26.07.2021, where the AO stated that penalty proceedings u/s.271(1)(c) of the Act, is being initiated separately. The said lapse is even continued in show cause notice issued by the AO notice u/s.274 r.w.s.271(1)(c) of the Act, where the AO has issued printed form of show cause notice without striking of inapplicable portion of the notice. From the above, it is undoubtedly clear that the AO has not recorded satisfaction before initiation of penalty proceedings u/s.271(1)(c) of the Act. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of CIT v. SSA's Emerald Meadows(supra) and also the decision of the Hon'ble Karnataka High

Court in the case of CIT v. Manjunatha Cotton & Ginning Factory reported in [2013] 359 ITR 565 (Karnataka). The assessee had also relied upon the decision of ITAT Chennai Bench in the case of Shri Mahaveer chand Jain in ITA No.912/Chny/2020 order dated 13.05.2022.

10. The Ld.Counsel for the assessee further submitted that the Ld.CIT(A) erred in sustaining the penalty levied by the AO u/s.271(1)(c) of the Act, without appreciating the fact that the assessee neither concealed the particulars of income nor furnished inaccurate particulars of income warranting levy of penalty u/s.271(1)(C) of the Act. The Ld.Counsel for the assessee further submitted that if you go through the assessment order passed by the AO, the AO clearly admitted the fact that there is no corroborative evidence to the sworn statement with reference to the material unearthed during the course of search which suggest 'concealment of particulars of income or furnishing of inaccurate particulars of income'. The AO has made addition towards additional income on estimated disallowance of portion of marketing expenses based on statement recorded from the director of Assessee Company during the course of search. Except this, there is no evidence with the AO to allege that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, which warrants levy of penalty u/s.271(1)(C) of the Act. The Ld.Counsel for the assessee further referring to the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd., v. State of Orissa [1972] 83 ITR 26 and also the

decision of the Hon'ble Delhi High Court in the case of CIT vs. Escorts Finance Ltd. [2009] 226 CTR 105 (Del) submitted that penalty cannot be levied merely because amount taxed as income. In the instant case, quantum assessment is completed based on *ad-hoc* disallowance on estimating portion of marketing expenses and based on surrender of income by the assessee, but not backed by any incriminating material which would neither mean that the assessee has neither concealed the particulars of income nor furnished inaccurate particulars of income. Therefore, he submitted that penalty levied by the AO and sustained by the Ld.CIT(A) should be deleted.

11. The Ld.DR, Shri. R. Clement Ramesh Kumar CIT, on the other hand, supporting the order of the Ld.CIT(A), submitted that it is an admitted fact that during the course of search huge amount of unaccounted cash was found and seized from the residential premise of the assessee Director and their associates. Further, they have admitted additional income towards inflated expenditure under the head 'marketing expenses' which is further backed by the enquiries conducted during the course of assessment proceedings, where the suppliers have admitted to have returned 1/3rd of cash to the assessee. Based on the admission of the assessee coupled with enquiries conducted during the course of search, a statement was recorded from the working Director of the assessee, where he has explained ***modus operandi*** of generation of unaccounted income and further admitted additional income of Rs.113.99 Crs. towards

disallowance of marketing expenses. Had search been not conducted in the case of the assessee, the ***modus operandi*** of the assessee and generation of unaccounted income was gone unnoticed. Therefore, the arguments of the assessee that it has not furnished inaccurate particulars of income or concealment of particulars of income, is incorrect. The Ld.DR further submitted that the assessee has challenged show-cause notice issued by the AO and also raised its objection before the AO. The AO has clarified and also disposed off objection raised by the assessee which is evident from the penalty order passed by the AO, where the AO has clearly stated that penalty proceedings has been initiated for concealment of income. Therefore, there is no merit in grounds taken by the assessee in light of notice issued by the AO and thus, arguments of the assessee should be rejected.

12. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.271(1)(c) of the Act, provides for levy of penalty for 'concealment of particulars of income or furnishing of inaccurate particulars of income'. If you go by the provisions of Sec.271(1)(c) of the Act, there are two charges, for which, penalty can be levied. (i) 'Concealment of particulars of income and (ii) Furnishing of inaccurate particulars of income'. This is further fortified by the provisions of Sec.274 of the Act, and as per said provision, no order imposing penalty under this chapter shall be made unless, the assessee has been heard or has been given a reasonable

opportunity of being heard. From the conjoint reading of section 271(1)(c) r.w.s.274 of the Act, it is undisputedly clear that charge must be precise and imposing of penalty only on that footing. Therefore, before deciding the issue of penalty levied u/s.271(1)(c) of the Act, in light of show cause notice issued by the AO u/s.274 r.w.s.271(1)(c) of the Act dated 26.07.2021, one has to examine the assessment order passed by the AO and show cause notice issued by the AO u/s.274 r.w.s.271(1)(c) of the Act and consequent penalty order passed by the AO.

13. It is an admitted legal position that before initiating penalty, the assessee must be apprised of the precise charge brought against the assessee. The assessee must be told distinctly whether he has held guilty of having concealed the particulars of income or furnished inaccurate particulars of income. Section 274(1) provides for reasonable opportunity to be given to the assessee so that he can meet the charge. Therefore, from the above, it is very clear that the satisfaction arrived at by the AO before charging the assessee on particular limb of u/s.271(1)(c) of the Act, the AO must clearly record his satisfaction and such satisfaction should discernable from the assessment order itself. This is because, if penalty proceedings are commenced against the assessee on a particular footing which is concealment of particulars of income, but finally levy of penalty is based on a different footing altogether i.e. on the footing of inaccurate particulars of income is not only deprived of the right of the assessee to face the charge before the authority but also violates

principles of natural justice. It cannot be said that in such circumstances, the assessee had been given a reasonable opportunity of hearing before the order imposing penalty was passed. Therefore, before initiating penalty proceedings, the AO should record clear satisfaction in the assessment order itself and specify under which limb he proposed to initiate penalty proceedings u/s.271(1)(c) of the Act. In case, there is no clear satisfaction as required under the law in the assessment order, but at least such satisfaction should be discernable from the show cause notice issued by the AO u/s.274 r.w.s.271(1)(c) of the Act. Issuing printed form of notice without specifying a particular charge, i.e. whether penalty proceedings are initiated for 'concealment of particulars of income or furnishing of inaccurate particulars of income', the assessee cannot be given at notice of particular charge so that it can meet the charge. Thus, the basis of the issuance of notice should remain same while imposing penalty. If the notice is issued in the context of concealment of income, then, the penalty cannot be levied by shifting basis to inaccuracy of particulars. This is to ensure that the assessee gets an adequate opportunity in respect of default which is detected and alleged against the assessee and which forms the basis for issuance of notice u/s.271(1)(c) of the Act and to ensure that the assessee is not put to peril of answering against something which individual specifically determined as his default or in respect of which no notice issued by the Officer which satisfaction alone matters at the stage of the initiation of the proceedings. This legal

position is clearly explained by the Hon'ble High Court of Karnataka in the case of CIT v. Manjunatha Cotton & Ginning Factory reported in 88 taxaman.com 133, where, it has been clearly held that existence of condition stipulated u/s.271(1)(c) of the Act, is a ***sine qua non*** for initiation of proceedings u/s.271(1)(c) of the Act. The existence of such conditions should be discernable from the assessment order or order of the appellate authority or revisional authority. Even, if there is no specific finding regarding the existence of the conditions u/s.271(1)(c) of the Act, at least the facts set out in Explanation-1A & 1B should be discernable from the order which is by legal fiction constitutes concealment because of deeming provision. Even if these conditions do not exist in the assessment order, at least a direction to initiate proceedings u/s.271(1)(c) of the Act, is a ***sine qua non*** for the AO to initiate the proceedings, because of deeming provision contained in sec.1B. The Hon'ble High Court further held that notice u/s.274 of the Act should specifically stated the ground mentioned in s.271(1)(c) of the Act i.e. whether it is for 'concealment of particulars of income or furnishing of inaccurate particulars of income'., Sending a printed form of notice with grounds mentioned in Sec.271(1)(c) of the Act would not specific requirement of law. This legal position is re-affirmed by the Hon'ble Supreme Court in the case of CIT v. SSA's Emerald Meadows 73 Taxmann.com 248 (SC), where the Hon'ble Supreme Court dismissed the SLP against the order of the Hon'ble High Court which in turn upheld the

decision rendered by the Karnataka High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory (supra). A similar view has been expressed by the larger Bench of Hon'ble Bombay High Court in the case of Mohd. Farhan A.Shaikh vs. DCIT 125 taxmann.com 253, wherein it has been clearly held that where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated u/s.274 of the Act.

14. In this legal back ground, if you examine the facts of the present case, there is no dispute with regard to the fact that there is no satisfaction from the AO in the assessment order which is clearly evident from the assessment order passed by the AO, where the AO simply initiated penalty proceedings u/s.271(1)(c) of the Act, without specifying a particular charge on the assessee i.e. whether it is 'concealment of particulars of income or furnishing of inaccurate particulars of income' and said lapse even continued in show cause notice issued u/s.274 r.w.s.271(1)(c) of the Act, where the AO has issued a printed form of notice without striking of inapplicable portion of the notice. From the above, it is very clear that the AO has not arrived at satisfaction whether penalty is initiated for 'concealment of particulars of income or furnishing of inaccurate particulars of income'. In absence of proper notice, it cannot be said that the AO has applied his mined to relevant facts and also arrived at satisfaction that the assessee has concealed the particulars

of income or furnished inaccurate particulars of income. In absence of specific charge under which limb the penalty proceedings has been initiated, the AO cannot levy penalty u/s.271(1)(c) of the Act. In our considered view, penalty proceedings initiated u/s.271(1)(c) of the Act by issuing a vague notice u/s.274 r.w.s.271(1)(c) of the Act, vitiates the whole proceedings, including consequent penalty order passed by the AO and thus, order passed by the Assessing Officer imposing penalty u/s 271(1)(c) on the basis of invalid notice cannot be sustained under the law.

15. At this stage, it is relevant to consider various case laws relied upon by the Ld.Counsel for the assessee. The Ld.Counsel for the assessee has relied upon the decision of the Hon'ble jurisdictional High Court of Madras in the case of Babuji Jacob v. ITO reported in [2021] 430 ITR 259 (Madras). The Hon'ble Madras High Court after considering its earlier decision in the case of Sudaram Finance Ltd. v. ACIT reported in [2018] 93 taxmann.com 250, has held that penalty levied u/s.271(1)(c) of the Act, consequent to vague/defect notice issued u/s.274 r.w.s.271(1)(c) of the Act, cannot be sustained under the law. The relevant findings of the Hon'ble High Court are as under:

> *18. The first aspect is as to whether there is any concealment of particulars of the assessee's income. At the first instance i.e. during the scrutiny assessment, the assessee sent a letter dated 15.3.2016 explaining the entire transaction wherein he had stated that while filing the return of income, he was under the impression that both the properties were agricultural lands and that there was no tax liability. Consequently, since one of the properties namely the property at Egattur Village was treated to be a capital asset, the long term capital gains were*

computed and the assessee requested for deduction under Section 54F of the Act, as the sale consideration received was utilized for purchase of a new flat, in which, the name of the assessee's wife was also included as a purchaser. The assessee further stated about the sale of livestock and standing crops. The assessee also stated that he is a senior citizen carrying on agricultural operations for 27 years and that his income was based upon the interest received from bank deposits and offered that a sum of Rs.50 lakhs may be treated as revenue in nature and taxed as income though there was no positive fact or finding had been found so as to avoid protracted litigation.

19. Further, with regard to deposits, the assessee explained that he had received the amount of Rs.21,56,250/- towards development cost of the agricultural land and a copy of the letter acknowledging payment made by the party was produced. This amount was received by RTGS to his bank account and the buyer had confirmed in writing that this was paid as development cost. Hence, this amount related to sale consideration of the land.

20. This explanation, which was offered by the assessee, did not find favour with the Assessing Officer, who rejected the same and completed the assessment vide order dated 30.3.2016 under Section 143(3) of the Act and made additions as mentioned above. Thus, there was no allegation in the assessment under Section 143(3) of the Act that there had been concealment of particulars of income.

21. Admittedly, all the amounts were received by the assessee through banking channels and he had mentioned about the same in his return of income. The only mistake done by the assessee was to treat both the lands as agricultural lands. Once the notice under Section 143(3) of the Act was issued, the assessee was able to convince the Assessing Officer that the lands in Pudhupakkam Village were to be treated as agricultural lands. But, he was unable to convince the Assessing Officer that the lands in Egattur Village were agricultural lands, which were treated to be a capital asset. Therefore, there was no material available with the Assessing Officer to allege concealment of particulars of income.

22. With regard to furnishing of inaccurate particulars, the stand taken by the assessee was that both lands were agricultural lands, that he had been carrying on agricultural operations for 27 years, that he had been filing return of income regularly and that the source of income was from agricultural income and interest income from bank deposits. These facts were never disputed by the Assessing Officer.

23. After receipt of the penalty notice, the assessee submitted a reply dated 11.4.2016 wherein the assessee reiterated the stand taken in his letter dated 15.3.2016. However, the same was not accepted by the Assessing Officer while completing the assessment under Section 143(3) of the Act. The assessee further stated that he had produced all the facts of the transactions namely sale documents, materials, etc., before the Assessing Officer and therefore, it cannot be construed as furnishing of inaccurate particulars. The assessee also pointed out that while allowing exemption under Section 54F of the Act, the Assessing Officer considered 50% of the investments whereas 100% investments were done through banking channels. Therefore, the assessee stated that it cannot be said that correct particulars of income were not furnished. The assessee

further pointed out that he was in need of funds for purchase of a new flat, that he sold trees with roots, coconut seedling and other miscellaneous items, that the farming sector was an unorganized sector, that all were sold to agriculturists and that he cannot be compelled to furnish details in this regard. The assessee furthermore pointed out that full particulars such as bank statements, cash deposit out of accumulated income were fully disclosed and furnished to the Assessing Officer, that there was no non disclosure, that the explanation offered was bona fide and that therefore, penalty could not be imposed.

24. The Assessing Officer, while imposing penalty vide order dated 28.9.2016, held that but for the scrutiny assessment under Section 143(3) of the Act, the cash deposits would not have come to light and therefore, rendered a finding that the assessee furnished inaccurate particulars.

25. This finding of the Assessing Officer is incorrect because while completing the assessment under Section 143(3) of the Act, there was no allegation against the assessee as to furnishing of inaccurate particulars. But, the Assessing Officer did not accept the explanation offered by the assessee and made certain additions, which will not automatically result in interpreting the same as furnishing of inaccurate particulars. Further, we find that there is no specific finding as regards the concealment against the assessee because, on facts, it has been established before the Assessing Officer while completing the assessment under Section 143(3) of the Act that all transactions were through banking channels. Hence, the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue that both limbs of Section 271(1)(c) of the Act are attracted has to necessarily fall. Hence, we hold that there is inherent defect in the notice dated 30.3.2016 issued under Section 271(1)(c) of the Act, as it will vitiate the entire proceedings.

26. Since we have heard the learned counsel on the correctness of the orders passed by the Assessing Officer, the CIT(A) and the Tribunal on the merits of the matter, we proceed to discuss the other issues as well.

27. The CIT(A), while confirming the order of penalty, took note of the order passed by the Assessing Officer wherein the Assessing Officer rejected the explanation offered by the assessee, which ultimately resulted in an addition and the assessment was completed vide order dated 30.3.2016. The question would be as to whether rejection of the explanation and the consequential addition would automatically result in an order of penalty.

28. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue seeks to substantiate her case by relying upon the decision of the Hon'ble Supreme Court in the case of Mak Data (P) Ltd. Vs. CIT, II [reported in (2013) 38 Taxmann.com 448] wherein it was held that voluntary disclosure does not release the assessee from mischief of penalty proceedings under Section 271(1)(c) of the Act and in terms of the said provision, the Assessing Officer has to satisfy as to whether the penalty proceedings have to be initiated or not during the course of assessment proceedings and he is not required to record his satisfaction in a particular manner or reduce it into writing.

29. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan Vs. CIT [reported in (2001) 118 Taxman 324]. The decision of the Hon'ble Supreme Court in the case of Mak Data (P) Ltd., was taken note of by the Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of CIT, Chennai-IV Vs. Gem Granites (Karnataka) [reported in (2014) 42 Taxmann.com 493] and the aspect as to how onus/burden of proof shifts from the assessee to the Revenue when penalty proceedings are initiated, is held in the following terms :

> *"11. In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 (Mak Data P. Ltd., vs. Commissioner of Income Tax-II), the Hon'ble Supreme Court while considering the Explanation to Section 271(1), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise. Factually, we find that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case, such onus which shifted on the department has not been discharged. In the circumstances, we do not find that there is any ground for this Court to substitute our interfere with the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee."*

30. In the instant case, the assessee offered an explanation and we find the explanation to be cogent because all deposits were made through banking channels and out of two properties sold, the Assessing Officer accepted the assessee's stand that one of the properties was an agricultural land. Hence, we find that the burden cast upon the assessee to offer an explanation stands fulfilled. Consequently, the burden now shifts to the Revenue to establish the concealment of income or furnishing of inaccurate particulars of income or both. If the Revenue does not agree with the explanation offered by the assessee as in the instant case, then the onus is on the Revenue to prove that there was concealment of particulars of income or furnishing of inaccurate particulars of income. We find this aspect to be completely absent in the instant case. Therefore, we also find the imposition of penalty to be unjustified.

31. The assessee filed an appeal before the Tribunal, which confirmed the order passed by the CIT(A) that the assessee raised a new stand before the CIT(A). No such new stand has been raised. The stand taken by the assessee after receipt of the notice under Section 143(2) of the Act dated 02.9.2014 has been consistent i.e. before the Assessing Officer while submitting the reply to the penalty notice, in the appeal before the CIT(A)

and before the Tribunal. This is evident on a reading of the grounds of appeal filed before the CIT(A) as well as the notes of arguments filed by the assessee before the CIT(A) dated 30.6.2017. Therefore, to that extent, the CIT(A) and the Tribunal have committed an error.

32. The decision of this Court in the case of Sundaram Finance Ltd., was couched on a different factual position wherein the Court rejected the plea of the assessee, which was a limited company, when they raised an argument with regard to the validity of the notice for the first time before the High Court and considering the administrative set up of the said assessee and the fact that the assessee was never prejudiced on account of the alleged defect, the Court rejected the argument of the assessee.

33. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 30.3.2016, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under Section 271(1)(c) of the Act, both limbs in the said provision do not get attracted. Hence, the decision of this Court in the case of Sundaram Finance Ltd., cannot be applied.

34. The decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan is factually different wherein the assessee was unable to furnish evidence for loans and that he offered the amount of transaction as additional income and this explanation was not acceptable to the Assessing Officer and he applied Explanation (1B) to Section 271(1)(c) of the Act and imposed penalty.

35. In the instant case, the assessee has been able to explain the transaction even at the first instance i.e. while submitting the reply dated 15.3.2016 in response to the notice under Section 143(2) of the Act, which explanation he maintained till he filed an appeal before the Tribunal. Therefore, on facts, the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan is distinguishable.

36. Further, the CIT(A) found fault with the assessee in not challenging the assessment order and for having accepted the same. However, this cannot be a ground to enable the Assessing Officer to automatically levy penalty. In this regard, it is beneficial to refer to the decision of the Hon'ble Division Bench of this Court in the case of CIT Vs. Smt.Anitha Kumaran [reported in (2017) 79 Taxmann.com 304] wherein the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products (P) Limited [reported in (2010) 322 ITR 158] was followed wherein the Hon'ble Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression 'concealment of particulars of income and/or furnishing of inaccurate particulars of income' and after applying the decision in the case of Reliance Petro Products (P) Ltd., the Hon'ble Division Bench of this Court dismissed the appeal filed by the Revenue in the following terms :

> *"13.3. The Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression*

concealment of particulars of income and/or furnishing inaccurate particulars of income and went on to observe as follows:

".....A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate.

It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income".

We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income...."

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing

inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income.

We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

37. On this issue, a useful reference can be to the decision of the Gujarat High Court in the case of National Textiles Vs. CIT [reported in (2001) 249 ITR 125], which related to the assessment year 1974-75 wherein it was held that in order to justify the levy of penalty, two factors must co-exist namely (i) there must be some material or circumstance leading to a reasonable conclusion that the amount does not represent the assessee's income and it is not enough for the purpose of penalty that the amount has been assessed as income and (ii) the circumstances must show that there was animus i.e. conscious concealment or act of furnishing inaccurate particulars on the part of the assessee.

38. Further, the decision of the Hon'ble Division Bench of this Court in the case of CIT Vs. S.I.Paripushpam [reported in (2001) 118 Taxman 844] would support the case of the assessee. In the said case, the Appellate Assistant Commissioner, in the penalty proceedings, held that the amount, the addition of which was agreed to by the assessee was an amount, which had been set out in an enclosure filed along with the return. While testing the correctness of the order, the Tribunal held that the levy of penalty under Section 271(1)(c) of the Act was wholly unwarranted as there had been no fraud or wilful neglect and that the assessee had only, with a view to cooperate with the Department, agreed

to the addition. We observe that the above position will help the assessee, as there is not even a remote allegation that there was any fraudulent act by the assessee or the assessee was guilty of wilfully or negligently concealing the income and that his agreement to the addition of the amount, by itself, will not establish fraud or wilful neglect without something more.

39. For the above reasons, the assessee has to succeed on all grounds and consequently, it has to be held that the notice initiating the penalty proceedings is defective and invalid and the other findings rendered by the Assessing Officer, the CIT(A) and the Tribunal do not warrant imposition of penalty on the assessee.

40. In the result, the above tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee. No costs.

16. The assessee is also relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory (supra), wherein, the Hon'ble Karnataka High Court has considered an identical issue in light of show cause notice issued u/s.274 r.w.s.271(1)(c) of the Act and after considering relevant facts held that notice u/s.274 of the Act should specifically refer the grounds mentioned u/s.271(1)(c) of the Act i.e. whether it is for 'concealment of particulars of income or furnishing of inaccurate particulars of income'. Sending printed form of notice where all the grounds mentioned in u/s.271(1)(c) of the Act, would not specify the requirement of law. The relevant findings of the Hon'ble Karnataka High Court are as under:

- *Penalty under section 271(l)(c) is a civil liability. Therefore, mens re a is not an essential element for imposing penalty for breach of such civil obligations or liabilities. Willful concealment is not an essential ingredient for attracting civil liability. [Para 63]*

- *Existence of conditions stipulated in section 271(l)(c) is a sine qua non for initiation of penalty proceedings under section 271. The existence of such conditions should be discernible from the assessment order or order of the Appellate Authority or Revisional Authority. Even if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation I (A) and (B)*

should be discernible from the said order, which would, by a legal fiction, constitute concealment because of deeming provision. Even if these conditions cio not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271(l)(c) is a sine qua non for the Assessing Officer to initiate the proceedings because of the deeming provision contained in section 1(B). The said deeming provisions are not applicable to the orders passed by the Commissioner (Appeals) and the Commissioner. [Para 63]

- *The imposition of penalty is not automatic, i.e., imposition of penalty even if the tax liability is admitted, is not automatic. Even if the assessee has not challenged the order of assessment levying tax and interest and has paid the same, that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities which has resulted in payment of such tax or such tax liability came to be admitted, and if not, it would have escaped from tax net as opined by the Assessing Officer in the assessment order. Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty can be passed. If the explanation offered, even though not substantiated by the assessee, is found to be bona fide and all facts relating to the same and material for the compulation of his total income have been disclosed by him, no penalty can be imposed. [Para 63]*

- *The direction referred to in Explanation IB to section 271 should be clear and without any ambiguity. If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings in appeal, but the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.*

- *Notice under section 274 should specifically state the grounds mentioned in section 271(T)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form, where all the grounds mentioned in section 271 are mentioned, would not satisfy requirement of law. The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee. Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law. [Para 63]*

- *The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty, though emanate from proceedings of assessment, are independent and separate aspect of the proceedings. The findings recorded in the assessment proceedings in so far as 'concealment of income1 and 'furnishing of incorrect particulars' would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings. [Para 63]*

Therefore, it is clear that merely because the assessee agreed for addition and accordingly assessment order was passed on the basis of this addition and when the assessee had paid the tax and the interest thereon in the absence of any material on record to show the concealment of income, it cannot be inferred that the said addition was on account of concealment. Moreover, the assessee had offered the explanation. The said explanation was not found to be false. On the contrary, it was held to be bona fide. In fact, in the assessment proceedings, there is no whisper about these concealment. Under these circumstances, the entry found in the rough cash book could have been reflected in the accounts for the said financial year in which the survey took place, as the last date for closing the account was still not over. The very fact that the assessee agreed to pay tax and did not challenge the assessment order, cannot be construed as mala fide. Therefore, the Tribunal was justified in setting aside the orders passed by the Appellate Authority as well as the Assessing Authority. [Para 64]

Case 2

The Tribunal was justified in holding that the entire proceedings were vitiated as the notice issued was not in accordance with law and accordingly justified in interfering with the order passed by the Appellate Authority as well as the Assessing Authority and in setting aside the same. Hence, the substantial questions of law framed in this case is answered in favour of the assessee and against the revenue. [Para 66]

Case 3

- *In the instant case, the penalty proceedings were initiated by the Assessing Authority initially on the basis of his assessment order. During the pendency of the said penalty proceedings, the assessment order was challenged by way of an appeal. In appeal the Appellate Authority deleted the additions made under section 69 by the Assessing Authority. Instead, he sustained additions under new grounds of under valuation of the closing stock. However, the Assessing Authority, in the penalty proceedings, took note of the Appellate order and suitably amended the penalty proceedings and proceeded further in the matter and then imposed penalty. Therefore, it is clear, that the subject matter of the penalty proceedings was the order of the Appellate Authority and not the order passed by the Assessing Authority. If the Appellate Authority was satisfied that the addition had to be made on the ground of under valuation of the closing stock, which was not the finding recorded by the Assessing Authority, on which penalty proceedings had been initiated by the Assessing Authority, then, it was the Appellate Authority who should have initiated penalty proceedings and issued notice to the assessee to show cause why penalty should not be imposed. The said procedure was not followed, and therefore, though for different reasons, the first Appellate Authority set aside the order levying penalty, the Tribunal correctly appreciated the facts in a proper perspective and was justified in not interfering with the order passed by the Appellate Authority, setting aside the penalty order. In that view of the matter, there is no justification to interfere with the well considered order passed by the Tribunal. Thus, the substantial questions of law are answered in favour of the assessee and against the revenue. [Para 67]*

Case 4

When two fact finding authorities were satisfied that the explanation offered by the assessee was not false and it was a bona fide one, though the assessee had failed to conclusively prove the explanation offered, there is no justification to interfere with the well considered order passed by the Tribunal. Accordingly, the substantial question of law is answered in favour of the assessee and against the revenue. [Para 68]

17. The assessee is also relied upon the order of the ITAT Chennai in the case of Shri Mahaveerchand Jain in ITA No.912/Chny/2020 order dated 13.05.2022. The Tribunal under identical set of facts held as under:

6. Upon careful consideration of factual matrix, it could be gathered that the assessee made large cash deposits in his bank account and attributed the same to the fact that cash was received out of auctions as well as from private parties against equivalent amount of cheque. However, in the absence of any satisfactory explanation / evidences forthcoming from the assessee, the same has been added u/s 68 in the hands of the assessee. The additions have been confirmed up-to the level of Tribunal.

7. Before us, Ld. AR raised a pertinent legal issue and submitted that specific charge i.e., furnishing of inaccurate particulars of income or concealment of income, has not been framed against the assessee in the show-cause notice as well as in penalty order. Therefore, considering the ratio of various binding judicial precedents, the penalty stood vitiated for want of framing of specific charge. The copies of these decisions have been placed on record which include the decision of Hon'ble Madras High Court in Babuji Jacob vs ITO (430 ITR 259) as well as the decision of Hon'ble Bombay High Court in PCIT V/s Goa Coastal Resorts and Recreation (P.) Ltd (272 Taxman 157) against which revenue's Special Leave petition (SLP) has already been dismissed by Hon'ble Supreme Court which is reported at 130 Taxmann.com 379. The Ld. Sr. DR, has similarly relied on decision of High Court of Madras in M/s. Gangotri Textiles Ltd vs DCIT (121 Taxmann.com 171) as well as another decision in Sundaram Finance Ltd. Vs ACIT (93 Taxmann.com 250) against which the assessee's SLP has already been dismissed by Hon'ble Supreme Court which is reported at 99 Taxmann.com 152.

8. Upon perusal of notice issued u/s 274 r.w.s. 271(1)(c) as extracted above, we find that though the applicable clause has been ticked by Ld. AO, however, the applicable limb i.e., whether the penalty was being initiated for furnishing of inaccurate particulars of income or for concealment of income has not been specified. Even in the body of penalty order, penalty has mechanically been levied without framing specific charge against the assessee. As per settled legal position, the failure to frame specific charge against the assessee would vitiate the penalty proceedings and the penalty would be bad in law. The two limbs of Sec.271(1)(c) are concealment of income and furnishing of inaccurate particulars of income which carry different connotation / meaning.

Nonframing of specific charge against the assessee would vitiate the penalty proceedings since the penalty could be levied only for a specific charge. Furnishing of inaccurate particulars of income means, when the assessee has not disclosed the particulars correctly or the particulars disclosed by the assessee are found to be incorrect whereas, concealment of particulars of income would mean that the assessee has concealed the income and has not reflected certain income in its return of income. It could be seen that the show-cause notice issued u/s 274 r.w.s 271 was a vague notice in a printed form without specifying the exact charge for which the assessee was being penalized and therefore, it was a clear case of non-application of mind while initiating penalty against the assessee. The Ld. AO, while initiating the penalty was not clear as to specific limb which was applicable to given factual matrix. This is further fortified by the fact that no such exact charge has not been framed in the penalty order.

9. At this juncture, it would be useful to take note of the decision of Hon'ble High Court of Madras in the case of Babuji Jacob Vs. lTO (430 lTR 259; 08.12.2020). Upon perusal of the same, we find that the ratio of this decision is squarely applicable to the legal grounds raised by the assessee. The Hon'ble Court, inter-alia, held that the impugned notice under section 271(1)(c) did not specifically state as to whether assessee was guilty of concealing particulars of his income or had furnished inaccurate particulars of income. Hence, the impugned penalty was invalid and same was to be set aside. The adjudication of Hon'ble Court was as under: -

18. The first aspect is as to whether there is any concealment of particulars of the assessee's income. At the first instance i.e. during the scrutiny assessment, the assessee sent a letter dated 15.3.2016 explaining the entire transaction wherein he had stated that while filing the return of income, he was under the impression that both the properties were agricultural lands and that there was no tax liability. Consequently, since one of the properties namely the property at Egattur Village was treated to be a capital asset, the long term capital gains were computed and the assessee requested for deduction under Section 54F of the Act, as the sale consideration received was utilized for purchase of a new flat, in which, the name of the assessee's wife was also included as a purchaser. The assessee further stated about the sale of livestock and standing crops. The assessee also stated that he is a senior citizen carrying on agricultural operations for 27 years and that his income was based upon the interest received from bank deposits and offered that a sum of Rs.50 lakhs may be treated as revenue in nature and taxed as income though there was no positive fact or finding had been found so as to avoid protracted litigation.

19. Further, with regard to deposits, the assessee explained that he had received the amount of Rs.21,56,250/- towards development cost of the agricultural land and a copy of the letter acknowledging payment made by the party was produced. This amount was received by RTGS to his bank account and the buyer had confirmed in writing that this was paid as development cost. Hence, this amount related to sale consideration of the land.

20. This explanation, which was offered by the assessee, did not find favour with the Assessing Officer, who rejected the same and completed

the assessment vide order dated 30.3.2016 under Section143(3) of the Act and made additions as mentioned above. Thus, there was no allegation in the assessment under Section 143(3) of the Act that there had been concealment of particulars of income.

21. Admittedly, all the amounts were received by the assessee through banking channels and he had mentioned about the same in his return of income. The only mistake done by the assessee was to treat both the lands as agricultural lands. Once the notice under Section 143(3) of the Act was issued, the assessee was able to convince the Assessing Officer that the lands in Pudhupakkam Village were to be treated as agricultural lands. But, he was unable to convince the Assessing Officer that the lands in Egattur Village were agricultural lands, which were treated to be a capital asset. Therefore, there wasno material available with the Assessing Officer to allege concealment of particulars of income.

22. With regard to furnishing of inaccurate particulars, the stand taken by the assessee was that both lands were agricultural lands, that he had been carrying on agricultural operations for 27 years, that he had been filing return of income regularly and that the source of income was from agricultural income and interest income from bank deposits. These facts were never disputed by the Assessing Officer.

23. After receipt of the penalty notice, the assessee submitted a reply dated 11.4.2016 wherein the assessee reiterated the stand taken in his letter dated 15.3.2016. However, the same was not accepted by the Assessing Officer while completing the assessment under Section 143(3) of the Act. The assessee further stated that he had produced all the facts of the transactions namely sale documents, materials, etc., before the Assessing Officer and therefore, it cannot be construed as furnishing of inaccurate particulars. The assessee also pointed out that while allowing exemption under Section 54F of the Act, the Assessing Officer considered 50% of the investments whereas 100% investments were done through banking channels. Therefore, the assessee stated that it cannot be said that correct particulars of income were not furnished. The assessee further pointed out that he was in need of funds for purchase of a new flat, that he sold trees with roots, coconut seedling and other miscellaneous items, that the farming sector was an unorganized sector, that all were sold to agriculturists and that he cannot be compelled to furnish details in this regard. The assessee furthermore pointed out that full particulars such as bank statements, cash deposit out of accumulated income were fully disclosed and furnished to the Assessing Officer, that there was no non disclosure, that the explanation offered was bona fide and that therefore, penalty could not be imposed.

24. The Assessing Officer, while imposing penalty vide order dated 28.9.2016, held that but for the scrutiny assessment under Section 143(3) of the Act, the cash deposits would not have come to light and therefore, rendered a finding that the assessee furnished inaccurate particulars.

25. This finding of the Assessing Officer is incorrect because while completing the assessment under Section 143(3) of the Act, there was no allegation against the assessee as to furnishing of inaccurate particulars. But, the Assessing Officer did not accept the explanation offered by the assessee and made certain additions, which will not automatically result

in interpreting the same as furnishing of inaccurate particulars. Further, we find that there is no specific finding as regards the concealment against the assessee because, on facts, it has been established before the Assessing Officer while completing the assessment under Section 143(3) of the Act that all transactions were through banking channels. Hence, the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue that both limbs of Section 271(1)(c) of the Act are attracted has to necessarily fall. Hence, we hold that there is inherent defect in the notice dated 30.3.2016 issued under Section 271(1)(c) of the Act, as it will vitiate the entire proceedings.

26. Since we have heard the learned counsel on the correctness of the orders passed by the Assessing Officer, the CIT(A) and the Tribunal on the merits of the matter, we proceed to discuss the otherissues as well.

27. The CIT(A), while confirming the order of penalty, took note of the order passed by the Assessing Officer wherein the Assessing Officer rejected the explanation offered by the assessee, which ultimately resulted in an addition and the assessment was completed vide order dated 30.3.2016. The question would be as to whether rejection of the explanation and the consequential addition would automatically result in an order of penalty.

28. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue seeks to substantiate her case by relying upon the decision of the Hon'ble Supreme Court in the case of Mak Data (P) Ltd. Vs. CIT, II [reported in (2013) 38 Taxmann.com 448] wherein it was held that voluntary disclosure does not release the assessee from mischief of penalty proceedings under Section 271(1)(c) of the Act and in terms of the said provision, the Assessing Officer has to satisfy as to whether the penalty proceedings have to be initiated or not during the course of assessment proceedings and he is not required to record his satisfaction in a particular manner or reduceit into writing.

29. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan Vs. CIT [reported in (2001) 118 Taxman 324]. The decision of the Hon'ble Supreme Court in the case of Mak Data (P) Ltd., was taken note of by the Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of CIT, Chennai-IV Vs. Gem Granites (Karnataka) [reported in (2014) 42 Taxmann.com 493] and the aspect as to how onus/burden of proof shifts from the assessee to the Revenue when penalty proceedings are initiated, is held in thefollowing terms :

"11. In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 (Mak Data P. Ltd., vs. Commissioner of Income Tax-II), the Hon'ble Supreme Court while considering theExplanation to Section 271(1), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted

their income and not otherwise. Factually, we find that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case, such onus which shifted on the department has not been discharged. In the circumstances, we do not find that there is any ground for this Court to substitute our interfere with the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee."

30. In the instant case, the assessee offered an explanation and we find the explanation to be cogent because all deposits were made through banking channels and out of two properties sold, the Assessing Officer accepted the assessee's stand that one of the properties was an agricultural land. Hence, we find that the burden cast upon the assessee to offer an explanation stands fulfilled. Consequently, the burden now shifts to the Revenue to establish the concealment of income or furnishing of inaccurate particulars of income or both. If the Revenue does not agree with the explanation offered by the assessee as in the instant case, then the onus is on the Revenue to prove that there was concealment of particulars of income or furnishing of inaccurate particulars of income. We find this aspect to be completely absent in the instant case. Therefore, we also find the imposition of penalty to be unjustified.

31. The assessee filed an appeal before the Tribunal, which confirmed the order passed by the CIT(A) that the assessee raised a new stand before the CIT(A). No such new stand has been raised. The stand taken by the assessee after receipt of the notice under Section 143(2) of the Act dated 02.9.2014 has been consistent i.e. before the Assessing Officer while submitting the reply to the penalty notice, in the appeal before the CIT(A) and before the Tribunal. This is evident on a reading of the grounds of appeal filed before the CIT(A) as well as the notes of arguments filed by the assessee before the CIT(A) dated 30.6.2017. Therefore, to that extent, the CIT(A) and the Tribunal have committed an error.

32. The decision of this Court in the case of Sundaram Finance Ltd., was couched on a different factual position wherein the Court rejected the plea of the assessee, which was a limited company, when they raised an argument with regard to the validity of the notice for the first time before the High Court and considering the administrative set up of the said assessee and the fact that the assessee was never prejudiced on account of the alleged defect, the Court rejected the argument of the assessee.

33. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 30.3.2016, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under Section 271(1)(c) of the Act, both limbs in the said provision do not get attracted. Hence, the decision of this Court in the case of Sundaram Finance Ltd., cannot be applied.

34. The decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan is factually different wherein the assessee was unable to furnish evidence for loans and that he offered the amount of transaction as additional income and this explanation was not acceptable to the Assessing Officer and he applied Explanation (1B) to Section 271(1)(c) of the Act and imposed penalty.

35. In the instant case, the assessee has been able to explain the transaction even at the first instance i.e. while submitting the reply dated 15.3.2016 in response to the notice under Section 143(2) of the Act, which explanation he maintained till he filed an appeal before the Tribunal. Therefore, on facts, the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan is distinguishable.

36. Further, the CIT(A) found fault with the assessee in not challenging the assessment order and for having accepted the same. However, this cannot be a ground to enable the Assessing Officer to automatically levy penalty. In this regard, it is beneficial to refer to the decision of the Hon'ble Division Bench of this Court in the case of CIT Vs. Smt.Anitha Kumaran [reported in (2017) 79 Taxmann.com304] wherein the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products (P) Limited [reported in (2010) 322 ITR 158] was followed wherein the Hon'ble Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression 'concealment of particulars of income and/or furnishing of inaccurate particulars of income' and after applying the decision in the case of Reliance Petro Products (P) Ltd., the Hon'ble Division Bench of this Court dismissed the appeal filed by the Revenue in the following terms :

"13.3. The Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression concealment of particulars of income and/or furnishing inaccurate particulars of income and went on to observe as follows:

".....A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an

incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income...."

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript". We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case,there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will notamount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they areincorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason,the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

37. On this issue, a useful reference can be to the decision of the Gujarat High Court in the case of National Textiles Vs. CIT [reported in (2001) 249 ITR 125], which related to the assessment year 1974-75 wherein it was held that in order to justify the levy of penalty, two factors must co-exist namely (i) there must be some material or circumstance leading to

a reasonable conclusion that the amount does not represent the assessee's income and it is not enough for the purpose of penalty that the amount has been assessed as income and (ii) the circumstances must show that there was animus i.e. conscious concealment or act of furnishing inaccurate particulars on the part of the assessee.

38. Further, the decision of the Hon'ble Division Bench of this Court in the case of CIT Vs. S.I.Paripushpam [reported in (2001) 118 Taxman 844] would support the case of the assessee. In the said case, the Appellate Assistant Commissioner, in the penalty proceedings, held that the amount, the addition of which was agreed to by the assessee was an amount, which had been set out in an enclosure filed along with the return. While testing the correctness of the order, the Tribunal held that the levy of penalty under Section 271(1)(c) of the Act was wholly unwarranted as there had been no fraud or wilful neglect and that the assessee had only, with a view to cooperate with the Department, agreed to the addition. We observe that the above position will help the assessee, as there is not even a remote allegation that there was any fraudulent act by the assessee or the assessee was guilty of wilfully or negligently concealing the income and that his agreement to the addition of the amount, by itself, will not establish fraud or wilful neglect without something more.

39. For the above reasons, the assessee has to succeed on all grounds and consequently, it has to be held that the notice initiating the penalty proceedings is defective and invalid and the other findings rendered by the Assessing Officer, the CIT(A) and the Tribunal do not warrant imposition of penalty on the assessee. 40. In the result, the above tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee. No costs.

10. Similar is the decision of Hon'ble Bombay High Court in PCIT V/s Goa Coastal Resorts and Recreation (P.) Ltd (272 Taxman 157) which has not admitted question of law raised by the revenue by observing as under: -

5. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such petition, the two authorities have quite correctly ordered the dropping of penalty proceedings against the petitioner.

6. Besides, we note that the Division Bench of this Court in Samson Preinchery (supra) as well as in New Era Sova Mine (supra) has held that the notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both Samson Perinchery and New Era Sova Mine (supra), the notices issued had not struck of the portion which were inapplicable. From this, the Division Bench concluded that there was no

proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.

7. In the present case, as well if the notice dated 30/09/16 (at page 33) is perused, it is apparent that the relevant portions have not been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order are quite consistent by the law laid down in the case of Samson Perinchery and New Era Sova Mine(supra) and therefore, warrant no interference.

8. The contention based upon MAK Data (P.) Ltd.(supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself is defective and further, there is no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.

9. For the aforesaid reasons, we hold that no substantial questions of law arises in this appeal. Consequently, this appeal is dismissed.

The revenue's SLP against this decision has already been dismissed by Hon'ble Supreme Court on 31.08.2021 (130 Taxmann.com 379) by observing as under: -

1. Delay condoned.
2. We are not inclined to interfere with the impugned order.
3. The special leave petition is, accordingly, dismissed.
4. Pending application stands disposed of.

11. Similar is the decision of Hon'ble Bombay High Court rendered in CIT Vs. Samson Perinchery [2017 88 taxmann.com 413] wherein Hon'ble Court has confirmed the ratio laid down by Hon'ble Karnataka High Court in CIT V/s Manjunatha Cotton & Ginning Factory (359 ITR 565). This decision of Hon'ble Karnataka High Court has subsequently been followed by the same court in the case of CIT V/s SSA's Emerald Meadows (2016 73 Taxmann.com 241) which was agitated by the revenue before Hon'ble Supreme Court. However, Special Leave Petition, against the same, was dismissed by the Hon'ble Court on 05/08/2016 which is reported at 73 Taxmann.com 248. This decision of Hon'ble Karnataka High Court rendered in Manjunatha Cotton & Ginning Factory has subsequently been followed extensively in catena of judicial pronouncements rendered by various Hon'ble High Courts as well as different benches of Tribunal and taken a view that non-framing of specific charge in the show-cause notice would vitiate the penalty proceedings. The failure to frame specific charge against the assessee during penalty proceedings would be fatal to penalty proceedings itself and the same could not be sustained in the eyes of law.

12. Recently, the issue of defect in notice has been dealt at length by larger bench of Hon'ble Bombay High Court in Mohd. Farhan A.Shaikh V/s DCIT (125 taxmann.com 253) wherein the Hon'ble Court has answered the issue of reference as follows: -

Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in

Section 271(1)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings, Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law.

Question No. 2: Has Kaushalya failed to discuss the aspect of 'prejudice'?
184. Indeed, Kaushalya did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya, "fully knew in detail the exact charge of the Revenue against him". For Kaushalya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushalya closes the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done".

185 No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushalya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of nonapplication of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushalya's insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.

Question No. 3: What is the effect of the Supreme Court's decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are not struck off ?

187 In Dilip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the assessing officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done". Then, Dilip N. Shroff, on facts, has felt that the assessing officer himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.

188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays nonapplication of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

189. In Sudhir Kumar Singh, the Supreme Court has encapsulated the principles of prejudice. One of the principles is that "where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, "except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest".

190. Here, section 271(1)(c) is one such provision. With calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may refer to Rajesh Kumar v. CIT [(2007) 2 SCC 181], in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269]. According to it, when by reason of action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice must be followed. In such anevent, although no express provision is laid down on this behalf, compliance with principles of natural justice would be implicit. If a statue contravenes the principles of natural justice, it may also be held ultra vires Article 14 of the Constitution.

191. As a result, we hold that Dilip N. Shroff treats omnibus show-cause notices as betraying non-application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice.

13. The Ld. CIT-DR has relied on the decision of Hon'ble High Court of Madras in the case of Gangotri Textiles Ltd. V/s DCIT (121 Taxmann.com 171) which is distinguishable on facts. In this case, it was the findings that the assessee had understood the notices well and filed replies contesting the levy of penalty. The legal ground assailing defect in notice was raised for the first time before Hon'ble High Court and therefore,

Hon'ble Court declined to entertain the same However, the same is not the case here.

14. Another decision as cited by Ld. CIT-DR is the decision of Hon'ble High Court of Madras in Sundaram Finance Ltd. Vs ACIT (93 Taxmann.com 250) against which the assessee's SLP has already been dismissed by Hon'ble Supreme Court which is reported at 99 Taxmann.com 152. We find that this decision has already been distinguished by Hon'ble High Court of Madras in Babuji Jacob Vs. lTO (supra) as under:-

32. The decision of this Court in the case of Sundaram Finance Ltd., was couched on a different factual position wherein the Court rejected the plea of the assessee, which was a limited company, when they raised an argument with regard to the validity of the notice for the first time before the High Court and considering the administrative set up of the said assessee and the fact that the assessee was never prejudiced on account of the alleged defect, the Court rejected the argument of the assessee. 33. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 30-3-2016, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under section 271(1)(c) of the Act, both limbs in the said provision do not get attracted. Hence, the decision of this Court in the case of Sundaram Finance Ltd., cannot be applied. Therefore, the ratio of this decision could not be applied in the present case.

15. In the light of aforesaid legal position, since no specific charge was framed either in the show-cause notice or in the body of penalty order and there was failure on the part of Ld. AO to frame specific charge against the assessee, the penalty would not be sustainable in the eyes of law. By deleting the impugned penalty, we allow the appeal. Consequently, going into the merits of the penalty has been rendered academic in nature.

16. Similar are the facts in all the other years and impugned order is common order for all the years. The show-cause notices as well as penalty orders are substantially on the same line except for change in figures. The penalty, upon confirmation by Ld. CIT(A), is in further appeal before us. Facts being pari-materia the same as in AY 1998-99, the penalty for all these years stand deleted on legal grounds. All the appeals stand allowed on similar lines.

18. The assessee had also relied upon the decision of ITAT Chennai Benches in the case of Shri R. Sathiamurthy in ITA No.2197/Chny/2016 order dated 25.05.2022, wherein, the Tribunal under identical set of facts held as under:

6. We noted that this issue has been considered by the Hon'ble Karnataka High Court in the case of CIT vs, Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565 in great detail wherein the defect in notice is treated as jurisdictional issue. Even the Hon'ble Bombay High Court, Full Bench in the case of Mr. Mohd. Farhan A. Shaikh, supra, has considered exactly an identical issue. Even the Jurisdictional High Court in the cases of Babuji Jacob, supra and Original Kerala Jewellers, supra has considered identical situation and held that the very initiation of penalty proceedings on a defective notice is invalid and it do not warrant imposition of penalty u/s.271(l)(c) of the Act on the assessee.

7. As the issue of defect in notice i.e., jurisdictional issue, by the present assessee, being individual, raised before CIT(A) for the first time and the CIT(A) simpliciter rejected the plea of the assessee by observing in para 7.3 as under:-'

> *"7.3 The content of the entire assessment order itself is sufficient reason for initiating penalty proceedings u/s.271(l)(c); the AO has duly initiated penalty proceedings in the Assessment Order itself; hence, there is no need to record reasons for initiating penalty proceedings. Accordingly, ground No. 5 is also rejected."*

It means that the assessee is vigilant from the beginning and raised this issue of defect in notice for the first time before CIT(A) and assessee being individual, the issue is squarely covered by the decision of Jurisdictional High Court in the case of Babuji Jacob, supra, and hence, we delete the penalty and allow the appeal of assessee.

19. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that show cause notice issued by the AO notice u/s.274 r.w.s.271(1)(c) of the Act is vague in nature which does not specify under which limb penalty proceedings u/s.271(1)(c) of the Act are initiated. Therefore, we are of the considered view that show cause notice issued by the AO and consequent penalty order passed u/s.271(1)(c) of the Act is ***void ab initio*** and liable to be quashed and thus, we quashed show cause notice issued notice u/s.274 r.w.s.271(1)(c) of the Act, dated 26-07-2021 and consequent penalty order passed by the AO u/s.271(1)(c) of the Act dated 31.03.2022.

20. In the result, appeal filed by the assessee in ITA No.1164/Chny/2023 for AY 2015-16 is allowed.

ITA No.1165/Chny/2023 for AY 2016-17:

21. The facts and issues involved in this appeal are identical to the facts and issues which we had already been considered in ITA No.1164/Chny/2023 for the AY 2015-16. The reasons given by us in the preceding paragraphs No. **12 – 19** shall, ***mutatis mutandis,*** apply to this appeal, as well. Therefore, for similar reasons, we quashed show cause notice issued by the AO u/s.274 r.w.s.271(1)(c) of the Act, dated 26-07-2021 and consequent order passed by the AO imposing penalty u/s.271(1)(c) of the Act dated 31/03/2022.

22. In the result, appeal filed by the assessee in ITA No.1165/Chny/2023 for AY 2016-17 is allowed.

23. As a result, appeals filed by the assessee in ITA No.1164/Chny/2023 & ITA No.1165/Chny/2023 for AYs 2015-16 & 2016-17 are allowed.

Order pronounced on the 06th day of March, 2024, in Chennai.

Sd/-	**Sd/-**
(मनोमोहन दास)	**(मंजूनाथा. जी)**
(MANOMOHAN DAS)	**(MANJUNATHA.G)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 06th March, 2024.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4.विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF